BIOSOLIDS TECHNICAL ADVISORY COMMITTEE
Amendments to Biosolids Regulations after Transfer from VDH to DEQ

FINAL MEETING NOTES
TAC MEETING – FRIDAY, OCTOBER 3, 2008

Meeting Attendees

TAC Members	*Interested Public*	*DEQ Staff*
Carl Armstrong - VDH	George Floyd	Bryan Cauthorn
Karl Berger	Gayl Fowler	Ellen Gilinsky
Rhonda L. Bowen	Harrison Moody	James Golden
Trey Davis – Alternate for Wilmer Stoneman	Jared Morton	Mark Mongold
Greg Evanylo (Via Conference Call)	Sharon Nicklas	Angela Neilan
Tim Hayes	Chris Pomeroy	Bill Norris
Larry Land	Mary Powell	Charlie Swanson
Darrell R. Marshall - VDACS	Mike Realo	Christina Wood
Chris Nidel	Susan Trumbo	Neil Zahradka
Jo Overbey		
Jacob Powell - DCR		
Ruddy Roose		
Henry Staudinger		
Ray York		

NOTE: The following Biosolids TAC Members were absent from the meeting: Jim Burn -VDH; Katie Kyger Frazier; Lloyd Rhodes; Wilmer Stoneman

1. Welcome and Introductions – Why we are Here. (Ellen Gilinsky):

Dr. Gilinsky, Director of DEQ's Water Division, welcomed all of the meeting participants and thanked all of the Technical Advisory Committee Members for agreeing to participate in the process.

- She noted that this was a way for DEQ to get stakeholder input to the process as we revise the regulations dealing with biosolids.
- She also noted that we will listen to all that the TAC addresses during the process and will try to address their concerns and interests during the revision process but that the TAC does not have the final say. The process that will be followed is the same as for all regulatory actions. The findings and recommendations of the TAC will be incorporated into a draft version of the regulation, but that version has to go to the Director of DEQ as well as to the program staff and legal staff for advice and fine-tuning and then following the APA process will go out for public review and comment.
- Following development of revisions to the regulations under review the drafts will be submitted to the State Water Control Board for review and consideration and then will be sent out for public comment as part of the Public Participation Process.

- She noted that the Public Participation Process starts right here with the deliberations and discussions of the TAC members.
- DEQ's responsibility is to weigh everything that the TAC discusses to develop draft revisions to the regulations.

2. What is a TAC? - Discussions of Role, commitment, and Expectations of TAC Members and DEQ Staff. - How we will work together as a TAC. - Procedures (Angela Neilan & Bill Norris):

Angela Neilan, Community Involvement Specialist with the DEQ Office of Community Affairs and Bill Norris, Regulation Writer with the DEQ Office of Regulatory Affairs provided a brief summary of the TAC Process and Procedures.

- Staff identified the overall goals for this meeting of the TAC. The immediate goals or subject areas that need to be covered that were identified included:

  - History of the Program
  - How the TAC Process Works – Role of TAC members and DEQ Staff
  - Getting TAC Members to Know each other and members of the DEQ staff
  - Identification of TAC members concerns and issues
  - Clarification of what the TAC covers and What is Outside of the Scope of the TAC
  - Begin Prioritizing Issues for Discussions
  - Commitment of Meeting Logistics

- Staff outlined the importance of the "Biosolids Amendments Technical Advisory Committee Guidelines" document that had been distributed prior to the meeting. This document outlines the purpose of this regulatory action and describes the participatory approach that will be followed during the course of the TAC process. The guidelines also contain the official list of TAC members and the current schedule of TAC meeting dates and locations. The guidelines also provide a ready reference for TAC members and members of the public for the "roles of the members", "participation by person NOT on the TAC", and "DEQ staff role" in the process.

Role of the Members of the TAC: The purpose of the members of the TAC is to assist in the development of proposals to address needed amendments of the regulations pertaining to Biosolids after transfer from the Virginia Department of Health to the Virginia Department of Environmental Quality. The TAC has been formed to help the Department balance the concerns of all those interested in Biosolids regulations. All such concerns will be addressed by the TAC, and any member of the TAC is free to advance any opinion.

The role of the TAC is advisory only. The TAC's primary responsibility is to collaboratively contribute to the development of amendments to the biosolids regulations that are in the best interests of the Commonwealth as a whole.

The goal is to reach a **consensus** on how best to address: 1) consideration of outstanding State Board of Health Amendments (field storage, permit fees, and access control); 2) consistency between VPA and VPDES permit requirements; 3) public notice processes and permit modification procedures; 4) establishing appropriate buffers to address health concerns; 5) biosolids sampling requirements; 6) nutrient management requirements; 7) animal health issues associated with grazing; 8) financial assurance procedures; 9) permitting procedures; 10) other (Changes based on comments received in response to the NOIRA or discussions of the TAC.) The TAC will then

make recommendations to the Department for consideration by the Board. **Consensus** is defined as a willingness of each member of the TAC to be able to say that he or she *can live with the decisions reached and recommendations made and will not actively work against them outside of the process.* This is not to say that everyone will be completely satisfied by the result of the process. It is necessary; however, that each participant comes prepared to negotiate in good faith around complex and sensitive issues. Also, because the group represents many different interests, all members should expect to compromise in order to accomplish the group's mission. If the TAC cannot reach consensus, the Department staff will present the differing opinions to Department management and the Board.

You may be asked to demonstrate your strength of feeling for or against a particular idea, and may be asked to help set priorities during the course of the process.

Participation by Persons NOT on the TAC: Because TAC meetings are public meetings, any member of the public may attend and observe the proceedings. However, only TAC members have a seat at the table and participate actively in the discussions. Those persons not on the TAC are encouraged to work with and through the TAC members that have common interests to ensure that their concerns are heard. Those persons not on the TAC to develop regulations also have a formal opportunity to be heard during the 60-day public comment period on the proposed regulation.

As warranted, the Department will provide access for non-TAC members to make their concerns known to the TAC during meetings, to ensure full consideration of all issues surrounding the regulation in question, provided it is not disruptive or does not inhibit the advancement of the work of the TAC. (There are several ways to accomplish this. One option is to allow for a specific time for interested persons to address the group at a designated time during the meeting. Another is to reserve an empty chair at the table. If an interested person desires to make a brief comment or to raise an issue, they would come to the empty chair, be recognized by the facilitator, make their statement and then return to the audience. Time limitations may be necessary in order to ensure that all persons have an opportunity to address the group.)

- Staff then went over the logistical arrangements for the meeting and reviewed the process through which the deliberations of the TAC would be facilitated. Angela Neilan noted that she would be facilitating the process and that she would try to be as neutral as possible throughout the process. She will be relying on the technical expertise of the DEQ program staff and other Agency Staff represented on the TAC to address any technical or program specific questions that were brought up during the process. She noted that she will make sure that everyone gets heard during the process. She stressed that this was the way for stakeholders to have a say and to play a role in the regulatory development and amendment process.

CONSENSUS: Angela asked for a determination by the TAC members as to the handling of Cell Phones and "Black Berries" during the course of the meeting. It was agreed that unless there was a job related necessity for the device to be on that they would be cut-off during the course of the meeting and that they could be accessed during periodic breaks or outside of the meeting room.

- She noted that we would be identifying the concerns and issues of the TAC members and would be clarifying throughout the identifications of those concerns and issues "what falls in the responsibilities of the TAC as identified in the NOIRA for this process" and "what falls outside of the responsibilities of the TAC". The goal is to reach consensus but if there are items where consensus is not reachable those items would be included in a minority findings report documenting those concerns.

CONSENSUS: She asked for a commitment from the TAC members to participate in the deliberations of the TAC for the duration of the process (the meeting schedule) as outlined in the "Guidelines" document. All TAC Members agreed to be available for the currently scheduled meetings.

ACTION ITEM: Staff noted that any member that had a conflict with a scheduled meeting should contact Bill Norris directly to note their unavailability for the meeting and where possible to identify an "alternate" to participate in their stead. Staff noted that it was the responsibility of each TAC member to keep their designated "alternates: up to speed on the workings and deliberations of the TAC so that the process could continue smoothly in their absence.

3. Framework and Context – Legal and Guidance/Expert Panel/How we got here. (Neil Zahradka)

Neil Zahradka, Manager of Land Application Programs for VA DEQ provided an overview of the Legal Framework for Biosolids Land Application in Virginia.

Legal Framework: Biosolids Land Application in Virginia	
Hierarchy of Legal Structure:	Constitutions – US Constitution and Constitution of Virginia
	Statues (Commonly called "Laws") - United States Code; Code of Virginia; **Written by Legislators**
	Regulations – Code of Federal Regulations (CFR); Virginia Administrative Code (VAC); **Written by government agencies**.
	Guidance Documents
	Local Ordinances
Regulations:	Definition: a general rule governing people's rights or conduct that is promulgated (developed) by a federal or state agency and has the force of law.
	Agencies promulgate regulations in order to administer and enforce specific federal or state laws and to implement general agency objectives.
Federal Law:	Statutes: Federal Water Pollution Control Act (FWPCA) – 1972 – AKA: Clean Water Act – First modern water pollution law.
	1987 Amendment addressed disposal or use of sewage sludge – Required development of regulation providing guidelines for disposal and utilization of sludge – 40 CFR Part 503 was the resulting regulation – Rule became effective March 23, 1993.
Federal Regulations:	Regulations: "Part 503 Rule" - Promulgated by EPA to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants that might be present in sewage sludge – Establishes minimum national standards for the treatment, monitoring, use and disposal of biosolids – Disposal by: land application, surface disposal, and incineration.
	Classifies biosolids according to: trace element pollutant levels; pathogen levels; distributed in bag or bulk.
	Part 503 Rule (40 CFR 503.13) sets pollutant limits/ceiling limits for: arsenic; cadmium; copper; lead; mercury; nickel; selenium; zinc; molybdenum (ceiling only).

Legal Framework: Biosolids Land Application in Virginia	
	Part 503 Rule is self-implementing: Any preparer, land applier, owner/operator of surface disposal sites or biosolids incinerators, even if they do not hold a permit, must comply with the Part 503 Rule.
	States may: Change their regulations to meet minimum federal requirements – Be authorized to issue permits in accordance with federal standards – Be more restrictive than federal standards.
Virginia Requirements:	Statute - §62.1-44.19 of the State Water Control Law addresses biosolids
	Regulation – The Virginia Administrative Code (VAC) – Several Sections
Virginia Law:	Code of Virginia §32.1-164.5 – Statute charging Virginia Department of Health with regulating the use of Biosolids – Repealed as of January 1, 2008
	Code of Virginia §62.1-44.19 – Statute charging Virginia Department of Environmental Quality with regulating the use of biosolids – Effective January 1, 2008.
	The General Assembly has responded to local concerns with more requirements for land appliers – land application; marketing and distribution of sewage sludge; storage of sewage sludge; notice requirements; land applier certification – Some portions of the Law are self-implementing (SI).
	§62.1-44.19.3 – Prohibition on land application, marketing and distribution of biosolids without a permit – Owners of wastewater treatment plants that land apply, market or distribute biosolids shall operate under a valid VPDES or VPA Permit (SI)
	Sewage sludge will be treated to meet standards prior to delivery at the land application site (SI).
	Contractors with owners of WWTPs must obtain a VPA permit to land apply, market or distribute biosolids (SI) – Unless land application is authorized under the VPDES permit issued to the WWTP.
	Land disposal of lime-stabilized and unstabilized septage is prohibited (SI).
	Permit applications must include certification from the local government that storage sites are consistent with local ordinances (SI).
	DEQ, with assistance from DCR and VDH, shall promulgate regulations to ensure: Sewage sludge is properly treated/stabilized. - Use of biosolids is protective of public health and the environment – Runoff of sewage sludge into state waters in a manner that would cause pollution is prevented.
	DEQ will consult with DCR and VDH prior to permit issuance.
	Site specific restrictions may be incorporated into the permit.
	Permit Fees (SI) – Initial Issuance = $5,000 – Modification will not exceed $1,000.
	Establishment of the Sludge Management Fund
	Evidence of financial responsibility (SI).
	Notice to local government 100 days prior to application (SI – VDH 2005, DEQ 2008)
	Notice to DEQ at Least 14 days prior to application (SI)
	DEQ will conduct unannounced inspections.

Legal Framework: Biosolids Land Application in Virginia	
	Land application fees - $7.50/dry ton (English tons) (SI)
	DEQ will train local monitors.
	Local ordinances restricting storage >45 days on sites other than the farm where land application will occur.
	Localities cannot regulate biosolids in a way that conflicts with the state program.
	Currently limited to local ordinance for monitoring program (§62.1-44.29:3), storage restrictions (§62.1-44.19:3)
	§62.1-44.19:3.1 – Certification of sewage sludge land applicators – Regulation to train, test and certify persons applying Class B biosolids in Virginia.
Example of Regulatory Citation:	9VAC25-32-360: "9" - Title (subject) – Environment; "VAC" - Virginia Administrative Code; "25" - Board – State Water Control Board; "32" Chapter – VPA Permit Regulation; "360" - Section – Monitoring, records and reporting
Virginia Regulations:	State Board of Health – VDH: 12VAC5-585 – Biosolids Use Regulation (BUR)
	State Water Control Board (DEQ): 9VAC25-32 – VA Pollution Abatement (VPA) Permit Regulation; 9VAC25-32 – VA Pollutant Discharge Elimination System (VPDES) Permit Regulation; 9VAC25-20 – Fees for Permits and Certificates; 9VAC25-790 – Sewage Collection and Treatment Regulation
	DEQ administers the permitting program for biosolids under: the Virginia Pollution Abatement Permit Regulation (9VAC25-32-310 through 760) and the Virginia Pollution Discharge Elimination System Permit Regulation (9VAC25-31)
Virginia Pollution Abatement (VPA) Permit Regulation	VDH Biosolids Use Regulation incorporated into the VPA Regulation as Part IX (January 1, 2008): Article I. Definitions and Procedures; Article II. Operational and Monitoring Requirements; Article III. Biosolids Use Standards and Practices; Article IV. Permit Application Information for Biosolids Use; Article V. Certification of Land Appliers.
Virginia Pollutant Discharge Elimination System (VPDES)	VPDES Regulation includes: language from 40 CFR, Part 503; and the self-implementing requirements of the statute (January 1, 2008)
	VPDES Regulation Sections include: Definitions; Effect of a Permit; Application for a permit; Conditions applicable to all permits; Establishing limits, standards and other conditions (including reopener clause); Schedule of compliance; Public Involvement – Public notice of permit action and public comment period; Transfer, Modification, Revocation and Reissuance and Termination of Permits; Standards for Use and Disposal of Sewage Sludge.
Fees for Permits and Certificates	Land Application Fee and reporting (January 1, 2008); Exemptions: No fee for "exceptional quality biosolids" as defined in 9VAC25-32; Due Dates
DEQ Guidance Documents (policy)	Agency interpretation of the regulations; Written guidance on how to carry out regulatory requirement; Recognized by courts; Do NOT carry force of law.
Local Requirements	Local Ordinances: Made by local governing bodies; Binds only those in locality; Dillon's Rule applies in Virginia – the locality has only those powers granted by the legislature,

Additional comments/clarifications made during and after the presentation included the following:

- The overall task is to identify how we address the overarching changes to the regulations resulting from the transfer of the biosolids program from VDH to DEQ.
- Need to get everyone on the same page by examining the existing regulatory framework.

- Need to keep in mind how what we do might affect the local monitors.
- Anytime you write down anything there are opportunities for a number of different ways to interpret it. Guidance is needed to minimize the differences in interpretation.
- Need to look at the amendments that were required to transfer the biosolids program from VDH to DEQ to identify what needs to remain in "regulatory" language and what is better suited for "guidance" language.
- Staff noted that the DEQ Program Staff (Christina Wood; Bryan Cauthorn; and Charlie Swanson) were tasked with listening and noting the discussions of the TAC so that what is said and discussed by the TAC that has a place in guidance but not necessarily in the regulation doesn't get lost. Christina Wood has been tasked with the responsibility of tracking and incorporating the specific language into guidance while Bill Norris has been tasked with the tracking and development of specific regulatory language into the regulations. The goal is to do the Regulation and the Guidance concurrently.
- Staff noted that the term "biosolids" is not used in the statute; "sewage sludge" is used there exclusively. DEQ does use the term "biosolids" to distinguish sewage sludge that has met the regulatory requirements to be land applied.

ACTION ITEM: As a point of information, TAC members should all have a copy of the Part 503 Rule. Staff will include a copy of the Part 503 Rule in the distribution of materials to the TAC prior to the next meeting.

- Staff noted that the current version of the regulations was the result of the "Final Exempt Action" that was exempt from the full APA process. Staff worked to make the resulting regulatory language as close to the statue as possible.
- It was noted that there is no specific TAC task identified in the NOIRA to discuss "septage".
- It was noted that it might be a good idea to distinguish between "land disposal" and "land application". Staff noted that the statute uses the term "land disposal" interchangeably with "land application" and they are actually two different technical terms as used in the 503 rule; "Land disposal" does not consider agronomic rates for a receiving crop and the primary purpose is not to provide fertilizer or condition soils.
- Staff noted that one of the areas not specifically mentioned in the NOIRA was "definitions". There is a section in the VPA Regulation that contains additional definitions. Some of these terms are already defined in other sections of the existing regulation. Staff with the recommendations of the TAC will be looking at these definitions to eliminate duplicate definitions and to look at those terms that were/are defined differently between the VDH BUR regulations and the DEQ Biosolids Regulations.
- The key difference between the Law and the DEQ Regulations is that the Law tells the agency what to do while the Regulations tell the regulated public what to do. The Law directs DEQ.
- The critical thing that the TAC will be looking at in regard to the Fee Regulation is that the current statute sets fee limits but don't include a tiered structure as exists in the VPDES regulation.
- It was noted that the current requirement for a 14 day notice to the regulating agency prior to a biosolids application did not exist in the VDH BUR.
- It was also noted that the statute provides the authority to charge a fee. The State Water Control Board can change the amount of the fee up or down and it does NOT require or take

legislative action to make that change.

- Staff noted that the NOIRA provides an opportunity for the TAC to be able to address "other" items not included specifically in the NOIRA if discussions by the TAC so dictate.
- Staff noted that the majority of the biosolids amendments were incorporated into the VPA regulation.
- Staff also noted that the VPDES permit regulation contains primarily the language from the Part 503 Rule requirements.
- The TAC will be looking at the language of the amendments to ensure that if you are land applying biosolids in Virginia that the requirements are consistent across the regulations. If there are existing inconsistencies there either needs to be a reason for them or they need to be made consistent.
- The goal is for the guidance for the implementation of these regulations will be developed at the same time as the regulation is being revised and finalized. Staff noted that there were instances in the VDH BUR where the language was more suited for placement in guidance than in the regulation. These included instances where the language explained why a requirement was there in addition to spelling out the requirement. During this process staff and the TAC will be looking closely at the current language to see what should be included in regulation and what is more suited for inclusion in guidance. It was noted that the process for developing a guidance document is not part of the required APA Process so the issuance of guidance for public comment is a decision that the Agency makes. Issuance of a draft guidance document for public comment allows for input from the regulated community and the public on how the agency is anticipated handling an aspect of a regulation. Development of a guidance document allows DEQ program staff to be more consistent on how they handle a regulation. It was noted that most guidance is developed to increase consistency.
- It was noted in response from a question from the TAC that this process was different from the requirements/restrictions placed on the current Expert Panel. There is more flexibility on the TAC than the Expert Panel. The Biosolids TAC members can meet and discuss the items brought up during the TAC in any size group that they want to. Two or more members of the TAC can meet to discuss any item of interest either by phone or email or in person. If a larger group, i.e., a committee or sub-committee, is formed by the TAC to discuss a specific topic then staff will be available to make the meeting arrangements and to help facilitate the meeting. It was noted that if any members copy DEQ staff on their deliberations or meetings or correspondence that those emails would fall under the FOIA requirements.
- With regard to Local Ordinances, it was noted that DEQ can tell a locality what the regulation requires but cannot advise what a locality can or cannot put in a local ordinance.
- The TAC is to focus on the regulatory issues.

4. Summary of Key points in Current Laws Governing Biosolids/Review of What is Covered in the NOIRA (Christina Wood)

Christina Wood provided an overview presentation on the NOIRA – Amendments of Regulations Pertaining to Biosolids – VPA (Primary), VPDES and Fee Regulations.

NOIRA – Amendment of Regulations Pertaining to Biosolids	
Outstanding State Board of Health Amendments	NOIRA – Field Storage <45 days on farm storage for sites not under local conditional use permits. Law – Localities may, as part of their zoning ordinances, reasonably restrict the storage of sewage sludge by requiring a special use permit for storage up to 45 days on the farm where application will occur. Currently NOT in the regulation – allowed by variance.
	NOIRA – Permit Fees – create an equitable fee structure based on resources necessary to process permit – perhaps based on acreage. Law – Initial Issuance =$5,000; Reissuance or Modification will NOT exceed $1,000; Collected funds deposited into the Sludge Management Fund. Fee Regulation
	NOIRA – Access Control – the 2005 Joint Legislative Audit and Review Commission Report contained recommendations on site access control – Post signs for 30 days after application – Develop "Medium" public access designation – Develop language requiring fencing or physical barriers.
	Law – The Board shall adopt regulations to ensure land application of sewage sludge is performed in a manner that will protect public health. 9VAC25-32-530.B. Signage – The sign shall remain in place for at least 48 hours after land application has been completed at the site.
	9VAC25-32-620.B. Access – time restrictions: (i) a high potential for contact with the ground surface (public use) by the general public – one year, (ii) agricultural sites and other sites with a low potential for public exposure – 30 days, (viii) harvesting turf grass for placement on land with a high potential for public exposure or a lawn is prevented for 12 months. No fencing requirements.
Consistency between VPA & VPDES Permit Requirements	NOIRA – Examine differences – Develop alternatives to eliminate inconsistencies. Law – No one shall land apply, market or distribute sewage sludge except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit.

NOIRA – Amendment of Regulations Pertaining to Biosolids	
Public Notice Processes and Permit Modification Procedures	NOIRA – Eliminate Inconsistency – Adequate Neighbor Notification Law – Regulations shall include procedures for amending permits to include additional land application sites and sewage sludge types. Amendment to increase land by $\geq$ 50% shall be handled as a new permit in regard to public notice and public hearings.
	9VAC25-32-140.G – When a site is to be added to an existing permit authorizing land application of biosolids, the department shall notify persons residing on property bordering such site, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site
Establish Appropriate Buffers to Address Heath Concerns	NOIRA – Develop procedures for addressing health concerns that arise after permit issuance or after biosolids application. Law – Regulations shall be developed providing for extended buffers as an alternative to incorporation, when necessary to protect odor sensitive receptors as determined by the Department or Local Monitor.
	9VAC25-32-560.B.3.d: Distances (Feet) to land Application Area: Occupied dwellings – 200 feet; Water Supply wells or springs – 100 feet; Property Lines – 100 feet (Surface Application) – 50 feet (Incorporation); All improved roadways – 10 feet (Surface Application) – 5 feet (Incorporation)
	For applications where surface applied biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended buffer zone setback distances when necessary to protect odor sensitive receptors. When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no biosolids shall be applied within such extended buffer zones.
Biosolids Sampling Requirements	NOIRA – Should there be a mandatory sampling protocol? Additional Parameters? Law – Regulations shall include requirements for sampling, analysis, record keeping and reporting in connection with land application. The regulation “suggests” the sampling protocol, with recommended ceiling limits for metals.
	Biosolids Suggested Minimum: Source of sludge; Type of sludge; Percent solids (%); Volatile solids (%); pH (S.U.); TKN (%); Ammonia-N (%); “organic nitrogen”; Nitrates; Total phosphorus (%); Total potassium (%); Alkalinity as $CaCO^3$; Arsenic (mg/kg); Cadmium; Copper; Lead; Mercury; Molybdenum; Nickel; Selenium; Zinc
Nutrient Management Requirements	NOIRA – Remove duplicative language that overlaps with DCR's Nutrient Management Standards and Criteria Ensure consistency with DCR's Nutrient Management Standards and Criteria. Law – Regulations shall include requirements for site specific nutrient management plans, developed by certified nutrient management planners.
	9VAC25-32-560.A – The management practices plan shall include a nutrient management plan as required by 9VAC25-32-680 and prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to §10.1-104.2 of the Code of Virginia.

NOIRA – Amendment of Regulations Pertaining to Biosolids	
	Language in both documents: buffers; pH and lime management; Nitrogen requirements – agronomic rates; field slope; productivity; residual nitrogen; nitrogen mineralization rates
Animal Health Issues Associated with Grazing	NOIRA – Do the current restrictions adequately address equine species? Do the current restrictions adequately address specific micronutrient issues that may affect grazers? Law – The Board shall adopt regulations to ensure land application of sewage sludge is performed in a manner that will protect public health.
	9VAC25-32-620.B: (vi) feeding of harvested crops to animals shall not take place for a total of one month following surface application (two months for lactating dairy livestock), (vii) grazing by animals whose products will or will not be consumed by humans is prevented for at least 30 days (60 days for lactating dairy livestock)
Financial Assurance Procedures	NOIRA – Address Mechanisms to meet Financial Responsibility Requirements – Where the Responsibility Lies. Law – Anyone applying for on holding a permit shall provide written evidence of financial responsibility to pay claims for cleanup costs, personal injury and property damage. On permit application.
Permitting Procedures	NOIRA – Reduce Administrative Burden Maintain Integrity of Permit. General Permit for Class A EQ and R&D. Law – Regulations shall include requirements and procedures for issuance of permits, including general permits, authorizing the land application, marketing or distribution of sewage sludge.
Other	Additional areas addressed based on: Comments. Discussions of the TAC.
Substance of the NOIRA	Due to the diversity of areas being addressed, several proposals incorporating common areas of interest may be presented.

ACTION ITEM: Staff will distribute a copy of the JLARC study referenced in the presentation to the Biosolids TAC members.

Additional comments/clarifications made during and after the presentation included the following:

- It was noted that there were a number of uses of the word “should” in the original VDH BUR language that was brought over as part of the final exempt action. DEQ does not like to use the word “should” in a regulation. If it is a requirement then the word that is normally used is “shall”. Staff has developed a version of the regulations that attempts to address the “should or shall” usage issue.

- It was noted that Nutrient Management Plans can be written for more than one year as long as the soil samples are up to date every 3 years. The plans can also be updated.
- Staff noted that the reason for the overlap and duplicative language related to Nutrient Management Plans was that prior to 2007 there was no requirement to have a Nutrient Management Plan, but the VDH BUR contained most of the requirements of a NMP. Staff and the TAC need to review the regulations and requirements to determine the areas of duplicative language and to identify whether there is a reason for the duplication or not, if not then the language should be revised.
- Financial Assurance Procedures are included as part of the Permit Application but are currently not included as part of the regulation. These procedures need to be incorporated into the regulations in a way that fits with other DEQ financial assurance procedures and protocols.

ACTION ITEM: Staff will distribute a copy of the draft "Should/Shall" version of the Biosolids Regulations to the TAC prior to the next TAC meeting.

5. **Listing and Prioritization of Issues to be Addressed in Regulations – Preliminary Group Discussion (Angela Neilan)**

Preliminary discussions regarding an initial list of issues to be addressed by the TAC included the following:

- "Odor sensitive receptor" is not currently defined.
- It was noted that the use of "odor sensitive receptor" does not preclude exposure to chemicals.
- Clarification is needed for what falls under the category of "odor sensitive receptor".
- Concerns were also voiced over the use of the term "nuisance". The term "nuisance" is also not defined in the VA Code.
- Two different concepts were noted: "Nuisance" - Incorporate with a disc and provide for a bigger buffer and "Individual with Health Issue" - specific condition in the permit.
- A general discussion and clarification of the different requirements between the VPA and VPDES regulations is needed.
- In relation to the Nutrient Management Plan, how can you develop regulations that require specific requirements by another state agency? Clarification is needed on how this relationship between DCR and DEQ will work in relation to the Nutrient Management Plan requirements.
- It was noted that evaluation of a "toxic exposure" hinges on exposure, a proximity to compounds. "Odor" can cause true physical illness, even though the presence of an "odor" doesn't mean that it is "toxic". There can be real symptoms related to the presence of an "odor".
- Sampling needs to include both environmental and patient sampling methodologies and parameters.
- It was noted that the presence of an environmental sampling parameter doesn't imply that it is causing a disease.
- Looking for balance. Need a reasonable set of regulations that provides for the protection of environmental and public health and allows for the use of biosolids by farmers.
- The issue is how do you establish an appropriate buffer that is not more restrictive than

necessary. Criteria are needed to be able to decide on a buffer for a particular application.

- Balance is very important. Need to be able to balance the concerns of local governments; concerned citizens; and biosolids users in terms of notification; buffer; signage; and sampling requirements and protocols.
- Balance is needed. How does one develop health procedures and other needed protocols on a case-by-case basis? How are health related issues resolved.
- A recommendation was made to try to address the "easier" issues first and wait to address the harder, more controversial issues later in the process. It was suggested that the Health Related issues be addressed after receipt of the findings of the Biosolids Expert Panel.
- It was noted that DCR was not an enforcement agency so that any changes to the regulations related to the Nutrient Management Plan needs to take that into consideration.
- Balance towards precaution is needed. There is a need for adequate procedures to respond to complaints.
- Need to address complaints by proceeding ethically, medically and scientifically.
- The storage issue has a lot of gray areas that need to be addressed. The issue of con-mingling, quality of materials, and state of the materials need to be considered.
- There needs to be a focus on accountability.
- Buffers from "occupied dwellings" needs to be considered.

6. Staff review of TAC Listing and Prioritization of Issues to be Addressed in Regulations

Staff reviewed the initial discussions by members of the TAC and developed an initial list of issues to be addressed by the TAC. These included:

- Land Disposal versus Land Application distinctions
- Health Issues – Buffers; Procedures; Expert Panel Findings
- Field Storage
- VPA/VPDES Regulations
- Nutrient Management Plans (NMPs) – Class A/Class B; Implementation
- Sampling Requirements
- Clarification of what constitutes a "odor sensitive receptor"
- Notification requirements
- Addressing Citizen Concerns – Procedures
- Permit Fees
- Should/Shall language usage
- Permitting Procedures
- Financial Assurance

Staff provided an overview of the issues and topics that had been discussed by the TAC during the morning session. These discussions included the following:

- Health issues are on everyone's mind, but that one issue could dominate the discussion for the next six months.

CONSENSUS: The TAC discussed the idea of dealing with Health issues but decided to defer a lengthy discussion until after the Biosolids Expert Panel completes their report.

- VPA/VPDES – Permitting Issues – The permitting process is going on as we speak.
- Notification/communication is the root of all problems. Need to look closely at the proposed changes and regulation language dealing with notification. Need to discuss notification "at the Time of Permitting" and "at the Time of Application". The focus needs to be on talking about folks knowing that Biosolids are being applied.
- It was noted that the plan of work for the TAC was to discuss the general nature of the issues involved; review current regulatory language; and to develop draft proposed changes to the regulations for discussion at future meetings of the TAC.

7. Discussion of Priority Issues to be Addressed in Regulations – Group Discussion (Angela Neilan/Neil Zahradka)

The TAC discussed the priority listing of topics/issues and agreed that "Notification" was a good starting point for the discussions of the TAC. Staff provided an overview of the law and regulations related to notification provisions. The law relating to the regulation and management of the land application of sewage sludge can be found in §62.1-44.19:3 of the Code of Virginia as provided below:

§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit; ordinances; notice requirement; fees.

A. 1. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or valid Virginia Pollution Abatement Permit.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of this chapter. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

B. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that will

protect public health and the environment; and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits, including general permits, authorizing the land application, marketing or distribution of sewage sludge;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing, and distribution of sewage sludge;

6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application, marketing, and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3 and 62.1-44.19:3.4;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and approved by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to, sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as defined in § 62.1-44.17:1.1, sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters;

9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the Department and to the local governing body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved; and

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for a permit amendment to increase the acreage authorized by the permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings.

D. Prior to issuance of a permit authorizing the land application, marketing or distribution of sewage sludge, the Department shall consult with, and give full consideration to the written recommendations of the Department of Health and the Department of Conservation and Recreation. Such consultation shall include any public health risks or water quality impacts associated with the permitted activity. The Department of Health and the Department of Conservation and Recreation may submit written comments on proposed permits within 30 days after notification by the Department.

E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefore and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such

site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be $5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed $1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

G. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the Fund. The fees required by this section shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only and exclusively for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage sludge, the administration and management of the Department's sewage sludge land application program, including but not limited to, monitoring and inspecting, the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program, and to reimburse localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

I. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § 62.1-44.19:3.1, or regulations adopted under those sections.

N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

O. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under this section. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;

2. Deposit of the fees into the Fund; and

3. Disbursement of proceeds by the Department pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to this section; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing such storage without first complying with all requirements adopted pursuant to this subsection.

(1994, c. 288; 2001, c. 831; 2005, cc. 197, 396, 459, 593; 2007, cc. 390, 881, 927, 929.)

NOTE OF CLARIFICATION: There was some confusion raised over which version of the statute was being discussed. Notations made by the Code Commission for the 2007 amendments included the

following: “The 2007 amendment by c. 390 added subdivision A 2 [now A 5] and the second and third sentences of subsection C [now the first and third sentences of subsection R]. The 2007 amendments by cc. 881 and 929, effective January 1, 2008, are identical, and rewrote the section. The 2007 amendment by c. 927, effective April 4, 2007, added subsection I [now R].” These amendments are reflected in the text of the Code Section provided above.

The following items were included in the discussion of notification requirements:

- The law provides that first DEQ gets a permit application and then DEQ notifies the Local Government as to where and when the public meeting will be held. The permit application cannot be technically complete until the public meeting has been held. §62.1-44.19:3.4, included below, provide the notification of local governing bodies’ requirements and the public notice requirements.
- The SWCB shall not consider a permit complete without the public meeting and comments received by the local government or until 30 days after the meeting.

§ 62.1-44.19:3.4. Notification of local governing bodies.

A. Whenever the Department receives an application for land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the Department shall notify the local governing bodies where disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to discuss technical issues relating to the proposal. The Department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where land disposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The Board shall not consider the application for land disposal to be complete until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits.

B. When a farm is to be added to an existing permit authorizing land application of sewage sludge, the Department shall notify persons residing on property bordering such farm, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the Department shall determine whether additional site-specific requirements should be included in the authorization for land application at the farm.

(2007, cc. 881, 929.)

- DEQ staff is to give as much review of the Permit Application prior to the meeting as possible so that any questions regarding the application can be adequately addressed.
- Written comments are accepted up until 30 days from the date of the public meeting or in the case of a modification to a permit as envisioned in §62.1-44.19:3.4 B above for 30 days following notification by DEQ.
- With an initial application there will be a public meeting, but when there is an existing permit which is being modified by the addition of a farm to an existing permit, there won’t be a public meeting but there will be notification of adjacent property owners by DEQ and as indicated above there will be a 30 day comment period for the submittal of written comments.
- If a “farm” is added to an existing permit, DEQ notifies persons residing on adjoining property to the “farm” via a letter and there is a 30 day comment period.
- Concerns were made over what was meant by the term “farm”. It was suggested that a definition of the term “farm” might be needed in the regulation.

- Permit modifications dealing with the addition of acreage to an existing permit are also addressed by §62.1-44.19:3.C.10 provided below. An increase in acreage by the permit of 50 percent or more is treated as a new application for purposes of public notice and public hearings.

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for a permit amendment to increase the acreage authorized by the permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings.

- The TAC discussed the differences in the way that the statute addressed the addition of a "farm" to an existing permit and the addition of "acreage" to an existing permit and the differences in "notification" processes.
- A question was raised on whether this addition of a "farm" meant adjacent or contiguous? How many farms? What if the county permittee has many farms under the same permit and the farms are not all in one location?
- Adding greater than 50% in acreage to an existing permit requires a public meeting and more people are notified.
- It was suggested that the 50% figure may be inadequate, especially when acreage is added to an existing permit that may impact additional adjacent landowners then the original permit notification or there are new adjacent landowners.
- Some concerns were raised over the lack of notification for the addition of acreage to an existing permit especially when new adjacent landowners may be involved.
- It was noted that some permits may cover an entire county, so that the addition of land on one side of the county may impact an entire different set of adjacent landowners than the original permit notification, especially if the current application sites are on one side of the county and the new application sites are on the other.
- It was suggested that the current notification process may not be adequate. There are instances where the landowners who receive the notifications don't understand what the letter notification means.
- It was noted that in some cases the biosolids generator who is seeking a permit for the land application of biosolids has developed a "set of site selection criteria" that is used to identify/select sites for possible land application. It was suggested that DEQ might be able to review and approve these sets of site selection criteria so that the selection of future sites would use a consistent and known set of criteria.
- Staff noted that there was language in the VPDES Regulation for a "Land Application Plan" that follows the "503" Language that is used for the addition of sites to a permit. It was suggested that this language should be reviewed by the TAC so that a similar set of criteria and procedures for the addition of acreage to a permit could be included in the VPA Regulations.

ACTION ITEM: Staff will send the language for the Land Application Plan from the VPDES to the TAC prior to the next meeting.

- It was suggested that a set of site selection criteria could be included as part of the initial

permit application that would go through the public comment process and receive approval by DEQ. Then all future sites under this permit holder could use the same site selection criteria and if the permittee doesn't follow the criteria then there could be a Notice of Violation. This approach might provide a way to simplify the site selection process.

- It was noted that even with an approved set of site selection criteria that there would still be a public notice requirement for the addition of new sites.
- The question was raised as to what is in the notification letter. What is in the letter that makes the recipient consider any "health concerns"? It was suggested that the TAC should address the contents of the notification letter as part of a future discussion.
- Staff noted that "when we provide notice" is dictated by the statute, but we have some flexibility and latitude as to "how we provide that notice" and the "content of the notice"
- It was suggested that the permittee and the land applier need to have the information on any health issues or concerns raised as a result of the notification process earlier rather than later in the process.
- It was suggested that any existing health issues or concerns need to be known prior to the posting of signs regarding a pending application. In fact, health concerns need to be known at the time of permit application consideration.
- Staff noted that §62.1-44.19:3. E (text provided below) provides for site-specific conditions and for an "at least 14 day" review period by the permit applicant of those conditions.

> E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

- It was noted that there is sometimes a lag time between the issuance of a permit and the actual land application process so that the conditions and the adjacent land owners might be different.
- Staff noted that regarding the requirement for notice to DEQ prior to land application, the law only specifies an "at least 14 day" notice period. There is no upper limit specified.
- Staff noted that the current "signage requirements" (text included below) specifies that signs be posted "48 Hours" prior to Land Application and that they would remain posted until "48 Hours" after the land application is completed.
- It was noted that the signs need to include information on what to do and who to contact if you have a problem.
- Timing is important. It was suggested that 48 hours was not enough time.
- It was noted that the signage requirement was originally proposed by the land appliers as a means to communicate with the adjacent landowners to inform them of a land application taking place.

9VAC25-32-530. Land acquisition and management control.

A. When land application of sludge is proposed, the continued availability of the land and protection from improper concurrent use during the utilization period shall be assured. A written agreement shall be established between the landowner and owner to be submitted with the permit application, whereby the landowner, among other things, shall consent to apply sewage sludge on his property. The responsibility for obtaining and maintaining the agreements lies with the party who is the holder of the permit. Site management controls shall include access limitations relative to the level of pathogen control achieved during treatment. In addition, agricultural use of sludge in accordance with this regulation is not to result in harm to threatened or endangered species of plant, fish, or wildlife, nor result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. Site-specific information shall be provided as part of the sludge management or management practices plan.

B. At least 48 hours prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post a sign at the site that substantially complies with this section, is visible and legible from the public right-of-way, and conforms to the specifications herein. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site. The department may grant a waiver to this or any other requirement, or require alternative posting options due to extenuating circumstances. The sign shall remain in place for at least 48 hours after land application has been completed at the site.

C. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, four square feet or more in area and shall only contain the following information:

1. A statement that biosolids are being land-applied at the site;

2. The name and telephone number of the permit holder as well as the name or title, and telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

3. Contact information for the Virginia Department of ~~Health~~ Environmental Quality, including a telephone number for complaints and inquiries.

D. The permit holder shall promptly replace or repair any sign that has been removed from a land application site prior to 48 hours after completion of land application or that has been damaged so as to render any of its required information illegible.

- It was noted that the signs need to be clear as to what is going to happen, when and who to contact if there is an issue or a concern with the application process.
- It was noted that the land application of biosolids is an agricultural practice that is a benefit to farmers. The TAC should keep in mind what we are doing to the agricultural community with changes to the regulations. Should defer to the agricultural representatives on the TAC for consideration and evaluation of the impacts on the agricultural community.
- A comment was made that the 48-Hour notification requirement is a very sound practice.
- A comment was made that the original purpose of the 48-Hour signage requirement was to allow for the notification to the adjacent landowners of the pending application date and to allow for the notification to the applier of any problems or conflicts (outdoor events in the area, weddings, family gatherings, etc.) and to request a delay in the application to account for these events. It was noted that there are issues that impact this as it does other agricultural practices, including weather, equipment problems, and application schedules/commitments for application on other acreage that the applier also has to take into consideration when delaying an application at a specific site. It was noted that there needs to be a reasonable notice given to people living in the area.
- It was suggested that the 48 hour notice might not be adequate and that a greater notice period should be considered. It was noted that 2 weeks would probably be the outside notice limit for the applier and still allow for consideration of weather and other normal

agricultural practice considerations.

- As noted above, the 48-Hour notice requirement is in the Regulations.
- A comment was made that issues for notification of health concerns/issues can not happen with a sign. Procedures as to how a site is selected for land application need to be defined and a longer term notification to identify health concerns needs to be developed and considered. It was suggested that local Health professionals need to be involved in the development of site selection criteria.
- It was noted that the signage was not always an adequate way to provide notification. There should be an initial notification when a permit is under consideration for a specific area where health conditions could and should be considered. It was noted that "How you word the notification" is key to identifying specific health concerns and issues for a given application site or sites.
- The letter of notification needs to be early in the process. The crafting of the text of that notification needs to be well thought out to get people to consider any type of health concern/issue that might exist on properties adjacent to an application site.
- It was noted that once a permit is issued with a given set of conditions that there may be a lag time between the permit approval and the actual land application of biosolids. The question is with that lag time, how do residents in the area, who may be different than who was originally included as a part of the notification and public comment process, know what is going to take place other than the "48-Hour" signs?
- It was noted that most land appliers try to go beyond the permit requirements to take into consideration requests made by citizens and adjacent land owners prior to the application process.
- It was suggested that Local Monitors could play a key role in working with citizens and adjacent land owners and the applicators in resolving any concerns and issues. It was noted that the Local Monitor receives notice of a pending application earlier in the process than the signs are posted, so they could play a key role in communicating with the public. Need to consider the use of Local County Monitors to help bridge this gap between citizens and the land applier. The problem is that every county does not have a Local Monitor. It was noted that this is a local option and that a county has to pass an ordinance to create such a position.
- It was suggested that in some instances that the generator might be the better contact person to provide this "bridge" (i.e., HRSD).
- It was suggested that there might be a number of different ways to provide the required notification under differing situations.
- It was noted that under the VPDES program that there is not a signage requirement. Also there are some localities (i.e., Virginia Beach, Chesapeake, etc) that don't want signs. It was suggested that flexibility should be allowed in the notification method(s) used in a given area or under a given permit.
- The question was raised as to how the "notification" requirements would be verified if signs were not the method used?
- It was noted that under the VDH BUR that a waiver could be granted by the Health Department to not place signs "due to extenuating circumstances." This might mean that signs might not be posted if a locality objected to the signage requirements.
- Staff noted that it appears that the optimal time frame for notification of a land application may be 2 weeks.
- The concern is that there may be issues and concerns present at the time of the permit

issuance that may or not be present at the time the actual land application occurs and vice-versa.

- It was noted that concerned landowners would like to know when a permit is issued not just that one had been applied for.
- A concern was raised that there is potentially a large lag time between the issuance of a permit and the actual land application, so that fields (application sites) that are included in the permit application may not receive biosolids for a number of years and within that time frame conditions and concerns may be different.
- It was noted that based on experience that the purpose of the signs was to let the adjacent landowners and citizens that an application was going to occur so that an application could be delayed to accommodate a planned outside event in the area, etc. It was not envisioned as a way to account for health issues or concerns.
- Staff noted that in the short time DEQ has had the program, a number of health concerns had been voiced because a neighboring resident was made aware of the application by the signs.
- A member of the "interested public" through the "Open Chair" indicated that they have dozens of land applications taking place every week so that signage of sites is almost constant. Sending out additional notification letters is almost an impossible task for some generators. It was suggested that some form of advertisement in the local papers be utilized to notify the public on pending land applications. There could be specifics as to period of notice (once every 90 days) and size of notice developed that the applier could use that could be part of the permit requirements that could provide a means (a phone number and contact information) for citizens to be notified of the process and to be able to voice their concerns.
- It was suggested that the real issue is not the means of notification but having something in place that works.
- Staff noted that the use of an advertisement in the local papers in lieu of sending out a notification letter was one of the recommendations that had been discussed by the DEQ Community Involvement Task Force.
- It was suggested that we might not want to get too specific in how the notification was made so that there is flexibility in the process to account for different notification approaches. It was noted that the notification process could use a number of different approaches and techniques such as signs, letters, newspaper notices, and presentations at local citizen organizations (Ruritan Clubs, etc.). The goal is the Notification. The signs are not the end all and be all of the process. As long as the notice goes out is the key.
- It was noted that it might be a good idea to not eliminate the use of signs since they do provide a last-minute notification that the actual application is taking place within 48 hours and that the application has taken place within the last 48 hours.
- It was suggested that flexibility is needed since all localities do not want to use signs.
- It was noted by a member of the interested public through the "Open Chair" that there is a real problem that the use of the letter notifications does not address. In her rural area there is at least 30% of residents who do not read at a 1st grade level. Something needs to be done in addition to a letter or a notice. In most instances the residents do not even know what biosolids are. There is a real need for "verbal" communication and notification. She suggests that the use of ads and spots on the local radio stations might be a way to reach the affected public in real time and in a meaningful way. She also noted that in most cases it was real difficult with a mailing to actually get the residents of the area, since most of the

properties are owned by people that have no relationship to those that are living there. In some cases the notification needs to be in person to be effective.
- It was suggested that the notification needs to be to the occupants not just the land owners.

CONSENSUS: The members of the TAC agreed that the notification requirement options should be expanded to include more than just the signs. It was agreed that the notification letters as well as the use of signs is not always the way to meet the notification requirements, but should be considered as part of the available notification options. The method of communication needs to be more broad based and have more options. It was agreed that no matter the method of notification that a point of contact needed to be provided and that 48 hours was not enough time for the notification prior to an application. It was also agreed that the content of the notice, whatever the form MUST be mandatory.

- It was stressed that the use of "signs" is NOT the way to address Health concerns and issues; they are simply the way to inform the public that an application is going to take place and a way to provide some on site contact information to the public.
- It was noted that the use of signs also provides a means for the public to address issues that occur as a result of the application itself, i.e., a sloppy application job that requires clean-up by the applier.
- It was suggested that the signs do serve a purpose and should be utilized, but that they should NOT be the exclusive means of notification.

8. Discussion of Priority Issues to be Addressed in Regulations Continued – Group Discussion (Angela Neilan/Neil Zahradka)

Staff provided an overview of the Modification Procedures for the Addition of a Biosolids Source to an existing permit. Items included in the discussion included the following:

- Under the VDH BUR the addition of a biosolids source to an existing permit could happen with a letter if a number of specifications were met and the approval could occur in a couple of days.
- Under the VPA the addition of a source is not something that can happen overnight. It is classified as a "modification to a permit" which impossible to do under the VPA program in the same time frame as under the VDH BUR as demonstrated below.

9VAC25-32-220. Causes for modification.

A VPA permit may be modified, but not revoked and reissued, except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility which require the application of VPA permit conditions that differ from those of the existing VPA permit or are absent from it;

2. When new information becomes available about the operation or pollutant management activity covered by the VPA permit which was not available at VPA permit issuance and would have justified the application of different VPA permit conditions at the time of VPA permit issuance;

3. When a change is made in the promulgated standards or regulations on which the VPA permit was based;

4. When it becomes necessary to change final dates in compliance schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc.; or

5. For the addition of new land application sites, new biosolids sources or routine storage facilities to the permit.

- Concerns have been raised over the need to do a full permit modification if a source is already coming into the state as approved under another permit application. Consideration needs to also be given for the use of the same source by a new land applier if a county has not yet received biosolids from that source.
- Staff noted that there has been some discussion on the development of an "approved state list of sources" that once approved would NOT require a permit modification. Note that the same criteria would be used to create a graded/approved list for both instate and out-of-state sources.
- It was noted that if a source has to comply with state regulations and the 503 Rule, then who applies it should not make a difference. But it is understandable that a county or locality would want to know where the material is coming from. It was suggested that the creation of a list of approved sources was a good idea.
- Staff noted that the addition of a new source was classified as a "major modification" to the VPA permit. The addition of a new source is NOT specified in the definition of a "minor modification" under the VPA regulation, so therefore is handled as a "major modification".
- It was suggested that language should be considered that would allow the approval of a new source, especially one that is already coming into the state to be approved by a letter. This would require modification of the existing regulatory language.
- It was noted that different sources have different impacts on adjacent landowners. Certain sources have different impacts (i.e., odors) than others. There are variations that no one fully understands.
- A concern over the addition of "other" waste sources (i.e., hog lagoon; tobacco waste, etc.) to biosolids was raised. It was noted that these were classified as "industrial wastes" and should not be included in the discussions, since the only source for biosolids is from POTWS. Staff noted that there had been some exceptions to some VDH BUR permits which allowed for the addition of these "industrial wastes". DEQ staff noted that there is no distinction in name made between an individual VPA permit issued for biosolids and one for industrial waste, but that different permit conditions may exist for different types of material.
- It was noted that permits generally identify a number of different biosolids sources.
- It was also noted that having a list of approved sources would be good idea. There needs to be a distinction made between "industrial" and "biosolids" sources. It should be noted that "all biosolids are not created equal" and that there can be a significant difference in "odor". Different processes are used which create different biosolids characteristics. It was suggested that we might need to find ways to deal with nuisance concerns.
- It was noted that there has been an instance where a waste treatment plant has been put on a restricted list because of a violation. It was suggested the DEQ "Approved List" should be managed in such a way as to address any potential "restricted list" issues by putting the "problem plant(s)" on a "watch" list of some kind.
- It was suggested that sources with real odor or nuisance problems should be dealt with through the regulatory process. Perhaps sources that are on the "watch" list could only be approved on "remote sites". The Basic parameters that all sources must meet are the 503

requirements.

- Permits usually list more than one source; in fact usually 40 or 50 sources are included in a permit application.
- Staff noted that what we are looking for is a mechanism to deal with all land appliers and to deal with problem sources. The "devil is in the details". The way that it is put into the regulation so that the list is self modifying is the key.
- The concept is a way to address "major and minor" modifications with sufficient public notice to provide plenty of opportunity for public input and comment.
- The question is how much notice should be required prior to allowing biosolids from a new source to be applied.
- It was suggested that the notice should be 100 days to the county or locality. Staff noted that the §62.1-44.19:3.K (included below) speaks to "at least 100 days prior" before a newly permitted site can be utilized for land application; it does not speak to new sources of biosolids.

> K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

- §62.1-44.19:3.L (included below) provides for a written notification to DEQ of at least 14 days prior to commencing land application of sewage sludge at a permitted site.

> L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

- Staff noted that a straw-man of some revisions to the Biosolids Regulations that included a number of things, included omissions and errors; an attempt to address some of the should/shall references and a clean-up of references to VDH instead of DEQ among other things would be included as part of a mailing to the TAC, prior to the next meeting. The notification requirements that are now contained in statute but are not adequately addressed in the regulations will need to be addressed.
- As noted above, the 14 day notice has to identify/specify the expected source(s) of the biosolids for that application. If a different source, then that identified in the notice is to be used then a new notice would need to be filed.
- Staff noted that the 14-day notice should/shall include the sources that are being or will be used for the application process including any new sources.

9. Comments

Staff asked for any closing comments and comments from the public. The following comments were made:

- A concern was raised by a member of the interested public through the "Open Chair" about the discussions regarding the notification requirements/alternative mechanism for notification. It was suggested that it might be confusing to have a number of different options to choose from and that it might make it more difficult for DEQ to be able to determine whether the notification method used was adequate. It was suggested that a single method of notification should be selected.
- A concern was raised with regard to the use of different notification methods within the same county. The use of different methods in a single county might leads to confusion as to where the public turns for information about an application.
- Interest was expressed in how DEQ would craft language to address the notification requirements as discussed in this meeting.

10. Next Meeting

The next meeting of the Biosolids Technical Advisory Committee is scheduled for Monday, November 3, 2008 at 9:30 AM at the DEQ Piedmont Regional Office Training Room.

Topics that will be included in the discussions for that meeting include the following:

- Permit Fees
- The use of Should or Shall in the regulation
- Financial Assurance

ACTION ITEM: Staff will distribute copies of a straw-man of the biosolids regulations which addresses the errors and omissions; the use of should/shall and the correction of incorrect references to VDH in the regulations to TAC members prior to the next TAC meeting.

ACTION ITEM: Staff will distribute copies of "financial assurance" sections from other DEQ regulations for review by the TAC members prior to the next meeting.

11. Meeting Adjourned: Approximately 3:15 PM.